

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

WILLIAM J. MURRAY,

*Plaintiff,*

v.

TXU CORP. *et al.*,

*Defendants.*

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)  
) MISCELLANEOUS BUSINESS  
) DOCKET NO. 04-MBD-10069  
)

) (Related to Cause  
) No. 3:03 CV-088P, U.S. District  
) Court, Northern District of  
) Texas, Dallas Division)  
)  
)  
)

**AFFIDAVIT OF CHRISTOPHER H.M. CARTER**

I, Christopher H.M. Carter, having been duly sworn, hereby depose and state as follows:

1. I am over the age of twenty-one, am competent to testify as a witness, and have personal knowledge of the facts set forth in this Affidavit.
2. I am an attorney licensed to practice law in the Commonwealth of Massachusetts, and am in good standing with the Massachusetts bar.
3. I am a partner with the law firm of Hinckley, Allen & Snyder LLP, 28 State Street, Boston, Massachusetts, which represents nonparty American National Power, Inc. ("ANP") in the above-captioned.
4. Attached hereto as Exhibit A is a true and correct copy of a March 22, 2004 cover letter from Hinckley, Allen to TXU's counsel, Attorneys Patricia S. Gill, David C. Lonergan, and David P. Poole of the law firm Hunton & Williams LLP, 1601 Bryan Street, Dallas, Texas. The March 22 letter accompanied ANP's original Objection to TXU's Motion to Compel, dated March 22, 2004.

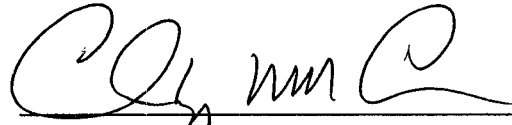
5. Attached hereto as Exhibit B are true and correct copies of March 23, 2004 email correspondence that I directed to TXU's attorney, David Poole. Through this correspondence, I forwarded to Attorney Poole copies of ANP's original, March 22 Objection, as well as a corrected draft of the Objection filed on March 23.

6. Attached hereto as Exhibit C is a true and correct copy of a March 31, 2004 letter that I directed to Anita B. Bapooji of the law firm of Testa, Hurwitz & Thibault, LLP, 125 High Street, Boston, MA, which is local counsel for TXU in the above-captioned matter.

7. Attached hereto as Exhibit D is a true and correct copy of an April 1, 2004 letter that I received from Attorney Bapooji.

8. Attached hereto as Exhibit E is a true and correct copy of a page from the web site of The Secretary of the Commonwealth of Massachusetts, William Francis Galvin, showing that ANP is a duly registered foreign corporation in the Commonwealth of Massachusetts with its principal office at 63 Forest Street, Suite 102, Marlborough, Massachusetts, and a registered Resident Agent also located at 63 Forest Street, Suite 102, Marlborough, Massachusetts.

Signed and sworn under the penalties of perjury this 9<sup>th</sup> day of April, 2004.

  
\_\_\_\_\_  
Christopher H.M. Carter

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF SUFFOLK, ss.

On this 9<sup>th</sup> day of April, 2004, before me, the undersigned, personally appeared Christopher H.M. Carter, and executed the foregoing document for the purposes therein contained, by signing the name of himself.

  
\_\_\_\_\_  
Notary Public Annette Rodriguez  
My Commission Expires: 9.11.2009

#481172

## **EXHIBIT A**

**HinckleyAllenSnyder** LLP  
ATTORNEYS AT LAW

28 State Street  
Boston, MA 02109-1775  
TEL: 617.345.9000  
FAX: 617.345.9020  
www.haslaw.com

*Darin A. Day*

March 22, 2004

**VIA FIRST CLASS MAIL**

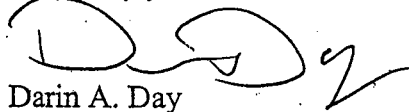
Patricia S. Gill, Esq.  
David C. Loneragan, Esq.  
David P. Poole, Esq.  
Hunton & Williams, LLP  
Energy Plaza, 30<sup>th</sup> Floor  
1601 Bryan Street  
Dallas, Texas 75201

Re: William J. Murray v. TXU Corp., et al.

Dear Attorney Gill:

Enclosed please find copies of Non-Party American National Power, Inc.'s Opposition to TXU's Motion to Compel, Proposed Protective Order, Affidavit of Nona S. Pucciariello and Affidavit of David T. Musselman in the above referenced matter.

Very truly yours,

  
Darin A. Day

DAD/mjm  
Enclosures

cc: Christopher H.M. Carter, Esq.

## **EXHIBIT B**

**Carter, Christopher H. M.**

---

**From:** Carter, Christopher H. M.  
**Sent:** Tuesday, March 23, 2004 10:18 AM  
**To:** 'dpooole@hunton.com'  
**Subject:** TXU/ANP: Opposition

David: As discussed, I'm emailing ANP's Opposition. Please give me a call, if possible this morning. Thank you. Chris Carter.

Hinckley, Allen & Snyder  
28 State Street  
Boston, MA 02109  
(617) 345-9000 x4518  
(617) 345-9020 fax



ANPTXU Opp. to  
TXU\_v1.DOC (136...

**Carter, Christopher H. M.**

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**From:** Carter, Christopher H. M.  
**Sent:** Tuesday, March 23, 2004 11:16 AM  
**To:** 'dpoole@hunton.com'  
**Subject:** Revised Opposition

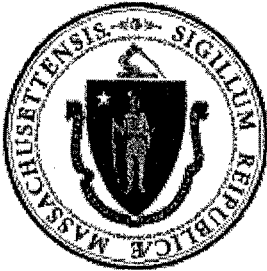
David: Here is the corrected document. If I can get a redlined document prepared, I'll sent that in a moment. Otherwise, I'd be happy to explain orally where corrections have been made. Thank you. Chris Carter.



ANPTXU Opp. to  
TXU\_v1.DOC (139...



## **EXHIBIT C**



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512  
Telephone: (617) 727-9640

**AMERICAN NATIONAL POWER, INC. Summary Screen**



Help with this form

**Request a Certificate**

The exact name of the Foreign Corporation: AMERICAN NATIONAL POWER, INC.

Entity Type: Foreign Corporation

Identification Number: 760033497

Old Federal Employer Identification Number (Old FEIN): 000000000

Date of Registration in Massachusetts: 08/31/1995

The is organized under the laws of: State: DE Country: USA on: 09/21/1982

Current Fiscal Month / Day: 12 / 31

Previous Fiscal Month / Day: 03 / 31

**The location of its principal office:**

No. and Street: 62 FOREST ST., SUITE 102

City or Town: MARLBOROUGH

State: MA Zip: 77024 Country: USA

**The location of its Massachusetts, if any:**

No. and Street: 62 FOREST ST., SUITE 102

City or Town: MARLBOROUGH

State: MA Zip: 01752 Country: USA

**The name and address of the Resident Agent:**

Name: IAN W. NUTT

No. and Street: 62 FOREST ST., SUITE 102

City or Town: MARLBOROUGH

State: MA Zip: 01752 Country: USA

**The officers and all of the directors of the corporation:**

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	IAN W. NUTT	62 FOREST ST., SUITE 102 MARLBOROUGH, MA 01752 USA	NONE
TREASURER	BARRY R. BRITS		NONE

		62 FOREST ST., SUITE 102 MARLBOROUGH, MA 01752 USA	
CLERK	UNKNOWN UNKNOWN	NONE NONE, MA 00000 USA	NONE
DIRECTOR	IAN W. NUTT	62 FOREST ST., SUITE 102 MARLBOROUGH, MA 01752 USA	NONE
DIRECTOR	DAVID CRANE	SENATOR HOUSE QUEEN VICTORIA ST. LONDON UK EC4V 4DP, GBR	NONE
DIRECTOR	DAVID T. MUSSELMAN	62 FOREST ST., SUITE 102 MARLBOROUGH, MA 01752 USA	NONE

business entity stock is publicly traded: ☐

The total number of shares and par value, if any, of each class of stock which the business entity is authorized to issue:

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments <i>Num of Shares</i> <i>Total Par Value</i>	Total Issued and Outstanding <i>Num of Shares</i>
No Stock Information available online. Prior to August 27, 2001, records can be obtained on microfilm.			

☐ Consent ☐ Manufacturer ☐ Confidential Data ☐ Does Not Require Annual Report  
☐ Partnership ☐ Resident Agent ☐ For Profit ☐ Merger Allowed

Select a type of filing from below to view this business entity filings:

ALL FILINGS  
Amended Foreign Corporations Certificate  
Annual Report  
Annual Report - Professional  
Articles of Consolidation - Foreign and Unregistered Foreign

View Filings

New Search

Comments

## **EXHIBIT D**

**HinckleyAllenSnyder**LLP  
ATTORNEYS AT LAW

43 North Main Street  
Concord, NH 03301-4934  
TEL: 603.225.4334  
FAX: 603.224.8350  
www.haslaw.com

**Christopher H.M. Carter**  
ccarter@haslaw.com

March 31, 2004

By Facsimile (617-248-7100)

Original By Regular Mail

Anita B. Bapooji, Esq.  
Testa, Hurwitz, & Thibault, LLP  
125 High Street  
Boston, MA 02110

**Re: William J. Murray v. TXU Corp. et al.**

Dear Attorney Bapooji:

I am sending this letter to confirm ANP's position with regard to TXU's desire to file a reply memorandum in this matter.

As I explained during our telephone conversation this morning, and had stated to Laura Stock on March 24, 2004, ANP will assent to the filing of a reply memorandum, provided TXU extends the same courtesy to ANP and assents to the filing of a surreply memorandum. Despite the fact that TXU has, to date, refused to assent to a surreply memo, the company on March 26 filed a pleading which certified that ANP assented to motion for a reply.

I do not believe that my discussion with Attorney Stock left any room for misunderstanding that ANP's ability to assent to a reply memo was predicated on TXU showing reciprocal cooperation to ANP concerning a surreply. With TXU now objecting to a surreply memo, its representation to the District Court that the parties assented to a reply memo, is inaccurate.

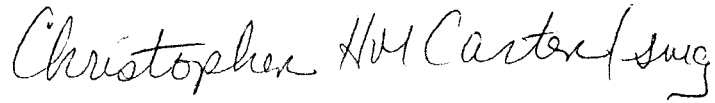
If TXU reconsiders its position as to a surreply, ANP remains willing to provide its assent to a reply memo. I urge TXU to pursue this approach, which at a minimum will spare the District Court the time and annoyance of processing additional pleadings. I submit that the approach also would be a positive step towards establishing a greater spirit of cooperation which could be valuable in promoting efforts to reach an acceptable resolution of this discovery dispute.

**HinckleyAllenSnyder** LLP  
ATTORNEYS AT LAW

Anita B. Bapooji, Esq.  
March 31, 2004  
Page 2

Please do not hesitate to call me if you would like to discuss this matter.

Sincerely,

A handwritten signature in cursive script that reads "Christopher H.M. Carter / smg". The signature is written in black ink.

Christopher H.M. Carter

CHMC/smg

cc: Nona Pucciariello, Esq.  
#479989

# HinckleyAllenOhyderLLP

ATTORNEYS AT LAW

43 NORTH MAIN STREET □ CONCORD, NEW HAMPSHIRE 03301  
603-225-4334 □ FAX 603-224-8350 □ www.haslaw.com

## FACSIMILE TRANSMITTAL SHEET

FROM: Christopher H.M. Carter, Esq.

DATE: March 31, 2004

NUMBER OF PAGES TRANSMITTED  
(INCLUDING COVER SHEET)

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If you did not receive the indicated number of pages or if any pages are illegible, please call us immediately at: (603) 225-4334

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TO: Anita Bapooji, Esq.

FIRM: \_\_\_\_\_

RE: \_\_\_\_\_

PHONE  
NUMBER: \_\_\_\_\_

FAX  
NUMBER: 617-248-7100

☐ URGENT ☐ PER OUR DISCUSSION ☐ AS REQUESTED ☐ PLEASE CALL TO DISCUSS ☐ PLEASE SEE BELOW

NOTES/COMMENTS:

Please see attached.

TRANSMISSION VERIFICATION REPORT

TIME : 03/31/2004 15:38

DATE, TIME	03/31 15:37
FAX NO./NAME	16172487100
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PAGE(S)	03
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MODE	STANDARD
	ECM



# HinckleyAllenO'nyderLLP

ATTORNEYS AT LAW

43 NORTH MAIN STREET □ CONCORD, NEW HAMPSHIRE 03301  
603-225-4334 □ FAX 603-224-8350 □ www.haslaw.com

## FACSIMILE TRANSMITTAL SHEET

FROM: Christopher H.M. Carter, Esq.

DATE: March 31, 2004

NUMBER OF PAGES TRANSMITTED  
(INCLUDING COVER SHEET)

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TO: Nona Pucciariello, Esq.

FIRM: \_\_\_\_\_

RE: \_\_\_\_\_

PHONE

NUMBER: \_\_\_\_\_

FAX

NUMBER: 508-382-9400

☐ URGENT ☐ PER OUR DISCUSSION ☐ AS REQUESTED ☐ PLEASE CALL TO DISCUSS ☐ PLEASE SEE BELOW

NOTES/COMMENTS:

Please see attached.

TRANSMISSION VERIFICATION REPORT.

TIME : 03/31/2004 16:35

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## **EXHIBIT E**

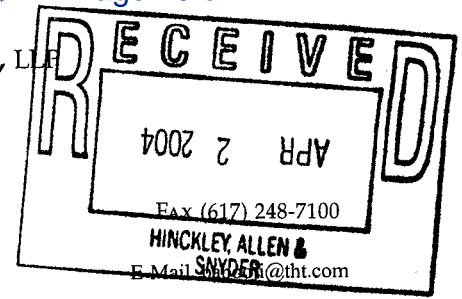
TESTA, HURWITZ & THIBEAULT, LLP

ATTORNEYS AT LAW

OFFICE (617) 248-7000

125 HIGH STREET  
BOSTON, MASSACHUSETTS 02110-2704

Direct Dial (617) 248-7040



April 1, 2004

**By Facsimile and First Class Mail**

Christopher H. M. Carter, Esq.  
Hinckley, Allen Snyder, LLP  
28 State Street  
Boston, MA 02109

RE: William J. Murray v. TXU Corp., et al., Misc. Business. Docket  
No. 04-MBD-10069, related to Cause No. 3:03CV-0888P (N.D. Tex., Dallas  
Division)

Dear Mr. Carter:

I am writing in response to your letter dated March 31, 2004 to confirm Defendants' position with regard to the assent provided for their motion for leave to file a reply brief.

As you may recall, you contacted Defendants' counsel, David Poole, after the filing deadline for ANP's opposition had passed, to request his assent for ANP to file a corrected version of that brief. Mr. Poole assented to that request. Then on March 24, 2004, again after the filing deadline for ANP's opposition had passed, you contacted Defendants' local counsel, Testa, Hurwitz & Thibault attorney Laura Stock, to request Defendants' assent to file a motion to substitute several pages of the affidavit of Ms. Pucciariello. Ms. Stock indicated that Defendants would assent if ANP would assent to Defendants filing a reply brief. You agreed and gave your assent. You then asked whether Defendants would assent to ANP filing a surreply. Ms. Stock indicated to you that she could not agree to a surreply, that she would have to speak to Defendants' lead counsel and that she would call you back. At the conclusion of your call with Ms. Stock, she again confirmed with you that ANP assented to Defendants filing a reply brief. At no time during your conversation with Ms. Stock did you indicate that ANP's assent to Defendants filing a reply brief was conditional on receiving Defendants' assent for a surreply. Later that day, ANP filed an Assented-To Motion to Correct Record (i.e., to correct the Pucciariello affidavit) noting that Ms. Stock assented to that motion. Defendants had provided such assent with the understanding that ANP assented to Defendants filing a reply brief.

On March 26, 2004, Ms. Stock left you a voicemail informing you that Defendants would not assent to a surreply. You and I then spoke on March 30, 2004 and you indicated your position that ANP had never assented to Defendants' reply brief but rather that such assent was conditional on receiving Defendants' assent for ANP to file a surreply. This is inconsistent with the position you took on March 24<sup>th</sup> when you had received Defendants' assent to file a corrected affidavit in exchange for ANP's assent for a reply brief. Nevertheless, we filed a revised motion

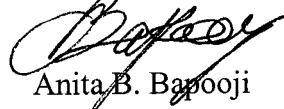
TESTA, HURWITZ & THIBEAULT, LLP

Christopher H.M. Carter, Esq.  
April 1, 2004  
Page 2

for leave to replace the assented-to motion for leave to file a reply that had been filed on March 26, 2004.

While I understand that you are now willing to assent to the filing of a reply brief by Defendants if we assent to the filing of a surreply by ANP, as I mentioned to you yesterday, Defendants are not willing to assent to a surreply. Defendants have extended several courtesies to you and your client to allow the substitution of briefing, and Defendants are not willing to assent to a surreply which will only prolong the briefing process on a motion to compel that is fully briefed and is now properly before the District Court.

Very truly yours,



Anita B. Barooji

cc: Patricia S. Gill, Esq. (via First Class U.S. mail)

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